

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE VALVE ANTITRUST LITIGATION

No. 2:21-cv-00563-JCC

**STIPULATED SUPPLEMENTAL  
PROTECTIVE ORDER**

**NOTE ON MOTION CALENDAR:  
OCTOBER 27, 2023**

WHEREAS, the protections set forth in the Stipulated Protective Order (“Protective Order”) in the above-captioned case (“Litigation”), *see* Dkt. No. 95, apply and are available to non-parties as well as parties; and

WHEREAS, Plaintiffs and Defendants have served subpoenas on non-party Epic Games, Inc. (“Epic”) that seek certain documents and information relating to Plaintiffs’ claims and Defendant’s defenses; and

WHEREAS, prior to the disclosure in this matter of its confidential information, Epic has requested protections in addition to those set forth in the Protective Order;

WHEREFORE, IT IS HEREBY ORDERED that “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” documents or information disclosed or produced by Epic, or disclosed or produced by parties to the extent such documents or information contain “HIGHLY

1 CONFIDENTIAL – ATTORNEY’S EYES ONLY” material of Epic, shall be subject to the  
2 following provisions:

3 1.1 The definitions, terms and provisions contained in the Protective Order shall  
4 be incorporated herein by reference as though fully set forth herein; provided, however, that in the  
5 event of a conflict between any definition, term, or provision of this Supplemental Protective Order  
6 and any definition, term, or provision of the Protective Order, this Supplemental Protective Order  
7 shall control with respect to such conflict.

8 1.2 For purposes of production or use of information or items designated  
9 “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” by Epic, the term “Expert” shall  
10 mean a person with specialized knowledge or experience in a matter pertinent to the litigation who:  
11 (1) has been retained by a party or its counsel to serve as an expert witness or as a consultant in  
12 this action; (2) is not a past or current employee of a party, a party’s competitor, or a competitor  
13 of Epic; (3) at the time of retention, is not anticipated to become an employee of a party, a party’s  
14 competitor, or a competitor of Epic; and (4) has signed the “Acknowledgment and Agreement to  
15 Be Bound” (Exhibit A).

16 1.3 Unless otherwise ordered by the Court or permitted in writing by Epic or  
17 the party designating such material, all information or items designated as “HIGHLY  
18 CONFIDENTIAL – ATTORNEY’S EYES ONLY” by Epic shall not be disclosed to any person  
19 except: (1) Experts (as defined in this Order) to whom disclosure is reasonably necessary for this  
20 litigation; and (2) those listed in subparagraphs (a), (d), (e), (g) and (h) of paragraph 4.2 of the  
21 Protective Order.

22 1.4 Notwithstanding the foregoing paragraph, information or items designated  
23 as “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” by Epic may also be disclosed  
24 to a person with specialized knowledge or experience in a matter pertinent to the litigation who  
25 has been retained by a party or its counsel to serve as an expert witness or as a consultant in this  
26 action and who is a past or current employee of a competitor of a party, a party’s competitor, or a

1 competitor of Epic or anticipated to become one, provided that before such disclosure, the person  
2 shall be identified to Epic (the “Notice”) along with the name of the company in which the person  
3 has been or currently is an employee or anticipates becoming an employee, and shall also sign the  
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A).

5 (a) A party that provides the Notice to Epic pursuant to Paragraph 1.4 may disclose the  
6 subject of the protected material to the identified expert or consultant unless, within seven (7)  
7 calendar days of delivering the Notice, the party receives a written objection from Epic. Any such  
8 objection must set forth in detail the grounds on which it is based.

9 (b) A party that receives a timely written objection must meet and confer with Epic to  
10 try to resolve the matter by agreement within seven (7) calendar days of the written objection. If  
11 no agreement is reached, Epic may, if necessary, file a motion in accordance with the Local Civil  
12 Rules to prevent disclosure. Any such motion must describe the circumstances with specificity, set  
13 forth in detail the reasons why the disclosure to the expert or consultant should be prohibited,  
14 assess the risk of harm that the disclosure would entail, and suggest any additional means that  
15 could be used to reduce that risk. The burden to demonstrate why disclosure should be prohibited  
16 shall rest with Epic.

17 2. Unless otherwise ordered by the Court or expressly permitted by Epic, no party  
18 may file with the Court, or introduce any information or item of Epic that has been designated  
19 “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” at trial in a manner that will result  
20 in disclosure to persons other than: (1) Experts (as defined in this Order); (2) persons described in  
21 paragraph 1.4 above; and (3) those listed in subparagraphs (a), (d), (e), (g) and (h) of paragraph  
22 4.2 of the Protective Order. In the event a Party seeks to file with the Court, or introduce any  
23 information or item of Epic designated “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES  
24 ONLY” at trial in a manner that will result in disclosure to persons other than (1) Experts (as  
25 defined in this Order), (2) persons described in paragraph 1.4 above, and (3) those listed in  
26 subparagraphs (a), (d), (e), (g) and (h) of paragraph 4.2 of the Protective Order, the Party shall

promptly notify Epic in writing so that the provisions of paragraphs 4.4 and 5.2(b) of the Protective Order may be carried out. The Parties recognize that the purpose of this provision is to provide a reasonable opportunity to object to the disclosure of information or items designated “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” at trial to persons other than Experts (as defined in this Order) and those specified in Paragraph 4.3 of the Protective Order (Dkt. 95), and agree to provide the notice described in this paragraph with reasonable advance notice such that Epic may raise any objection.

3. Any time a document produced by Epic that it has designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL is disclosed in a deposition, whether marked as an exhibit or not, Epic will be notified and have the 40 days in paragraph 5.2(b) of the Protective Order to designate that portion of the transcript containing the non-party’s CONFIDENTIAL or HIGHLY CONFIDENTIAL information as CONFIDENTIAL or HIGHLY CONFIDENTIAL.

4. For avoidance of doubt, the rights and obligations in paragraph 4.4 of the Protective Order apply equally to the filing of Epic’s designated confidential material or information and items designated HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED this 27th day of October, 2023.

/s/ Alicia Cobb

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*Attorneys for Defendant Valve Corporation*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or  
4 state proceeding, constitute a waiver by the producing party or non-party of any privilege  
5 applicable to those documents, including the attorney-client privilege, attorney work-product  
6 protection, or any other privilege or protection recognized by law.

7 DATED this 27th day of October 2023.

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11 John C. Coughenour  
12 UNITED STATES DISTRICT JUDGE  
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